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ORIGINAL

To: Docket Control

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Date: August 8, 2016

RE: NOTICE OF FINAL RULEMAKING  
Docket No. AU-00000A-15-0246

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AZ CORP COMMISSION  
DOCKET CONTROL

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Attached is the Notice of Final Rulemaking amending the Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 *et seq.*, as published in the *Arizona Administrative Register*, Volume 22, Issue 31 on July 29, 2016.

Arizona Corporation Commission  
DOCKETED

AUG 08 2016

DOCKETED BY	<i>KL</i>
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# Arizona Administrative REGISTER

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## NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the *Arizona Administrative Code*.

### NOTICE OF FINAL RULEMAKING

#### TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS SECURITIES REGULATION

##### CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES

[R16-120]

#### PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**  
R14-2-802      Amend
2. **Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: Arizona Constitution Article XV, §§ 40-202, 40-203, and 40-321  
Implementing statute: Arizona Constitution Article XV, §§ 40-202, 40-203, and 40-321  
In *Arizona Corporation Commission v. State ex rel. Woods*, 171 Ariz. 286, 830 P.2d 807 (1992), the Arizona Supreme Court determined that the Arizona Corporation Commission ("Commission") had the power to adopt the Affiliated Interests Rules under its exclusive and plenary constitutional rulemaking authority granted by Article XV, § 3, as the Affiliated Interests Rules were reasonably necessary for rulemaking. As they amend the Affiliated Interests Rules, the rule revisions proposed likewise are authorized under Article XV, § 3.
3. **The effective date of the rule:**  
July 14, 2016
  - a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
The Commission requests an immediate effective date for these rules under A.R.S. § 41-1032(A)(4) and (5). The rule revision will benefit the telecommunications utilities currently subject to the Affiliated Interests Rules as well as the Commission and Staff; will not penalize anyone; is less stringent than the rule that is currently in effect; will not have an adverse impact on public health, safety, welfare, or the environment; and does not affect the public involvement and public participation process. Thus, to ensure that the benefits to be created by the rule revision are realized as soon as possible, it is just and reasonable and in the public interest for the Commission to adopt the rule revision with an immediate effective date.
  - b. **If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable
4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 22 A.A.R. 424, March 4, 2016  
Notice of Proposed Rulemaking: 22 A.A.R. 411, March 4, 2016
5. **The agency's contact person who can answer questions about the rulemaking:**  
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**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The purpose of the rule change is to amend R14-2-802(A) to exempt telecommunications carriers, whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interests Rules, except as may be determined by a future Arizona Corporation Commission order. The specific change is based upon and supported by the changes to A.R.S. § 40-285 made by the Arizona Legislature in 2013.

The rule change is expected to relieve exempt telecommunications companies from having to submit to the Commission applications for waivers of the Affiliated Interests Rules associated with reorganizations, mergers, consolidations or refinancing, along with no longer having to submit Affiliated Interests Annual Reports.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The purpose of the rule change is to amend R14-2-802(A) to exempt telecommunications carriers whose retail telecommunications services have all been determined to be competitive, from application of the Affiliated Interests Rules, except as may be determined by a future Commission order. Those directly affected by the rulemaking include telecommunications service providers whose retail services have been determined to be competitive in Arizona and the Commission. There are no probable costs to the Commission. The benefits include time and cost savings due to no longer having to process waiver applications and Annual Affiliated Interests Reports. Benefits for telecommunications companies include time and cost savings due to no longer having to submit waiver applications and Annual Affiliated Interests Reports. No impact on employment is expected. Small businesses may benefit from a less regulatory burdensome merger transaction. There should be no costs or benefits to customers of exempted telecommunications companies.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

The clarity, conciseness, and understandability of the rule is enhanced in the final rulemaking by moving the new language to a new subsection (B); replacing the introductory language "Notwithstanding the preceding sentence" with "Notwithstanding subsection (A)"; moving the existing subsection (B) and relabeling it as subsection (C); and replacing the citation "A.A.C. 14-2-1101 et seq." with "A.A.C. Title 14, Chapter 2, Article 11" to conform to the Secretary of State rulemaking style requirements.

The modifications to the proposed rule do not result in a rule that is substantially different, under A.R.S. § 41-1025, than the proposed rule published in the Notice of Proposed Rulemaking.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

Summaries of the formal comments received and of Commission Staff's responses thereto, along with the Commission's responses are included in the following table. All of the formal and informal comments received regarding the rule revision were supportive of the rule revision.

WRITTEN COMMENTS		
Comment	Staff Response	Commission Response
<p>Qwest Corporation dba CenturyLink QC, CenturyLink Communications, L.L.C., and CenturyLink Public Communications, Inc. (collectively "CenturyLink") stated the following in support of the rule revision in the Notice of Proposed Rulemaking ("NPRM"):</p> <ul style="list-style-type: none"><li>• The Affiliated Interests Rules were adopted by the Commission six years before Congress adopted the Telecommunications Act of 1996, which opened local telecommunications services to competition;</li><li>• According to the decision in which they were adopted (Decision No. 56844 (March 14, 1990)), the Commission's purpose in adopting the Affiliated Interests Rules was to protect ratepayers from paying rates that included costs associated with holding company structure, financially struggling affiliates, or sweetheart deals with affiliates intended to extract capital from the utility to subsidize non-utility operations;</li><li>• As a result of the Telecommunications Act of 1996, the telecommunications industry in Arizona and the rest of the nation has grown and become more fully competitive, providing customers with numerous options for service, including service from non-regulated providers;</li><li>• The existence of competition has made it impossible for utilities to pass through to utility customers, through rate increases, the losses from bad business diversification decisions, and without the ability to pass through such costs, utilities "have no incentive to engage in cross-subsidization or other activities that financially weaken the utility operation";</li><li>• In 2013, in recognition of the competitive telecommunications market as a substitute for Commission regulation, the Arizona Legislature amended A.R.S. § 40-285 to exempt competitive telecommunications providers from the requirement to obtain Commission approval to dispose of assets or acquire the stock of other public service corporations, and the rule revision is consistent with the amendment to A.R.S. § 40-285;</li><li>• The Commission has granted numerous limited waivers to telecommunications utilities, which suggests that the Affiliated Interests Rules are overly broad;</li><li>• Because separate utilities have filed for waivers from portions of the Affiliated Interests Rules, and the Commission has not granted any utility complete exemption, telecommunications utilities are now subjected to disparate levels of relief from the Affiliated Interests Rules; and</li><li>• Telecommunications utilities, Staff, and the Commission are spending "inordinate amounts of time and energy on waivers for matters . . . better addressed by a total exemption from the [Affiliated Interests Rules] for competitive providers."</li></ul>	<p>Staff believes that the proposed rule revision will eliminate the need for the Commission to process and grant certain waivers of the Affiliated Interests Rules in the future and that this will conserve Commission resources and the resources of the affected telecommunications utilities. Staff supports the proposed rule revision and recommends that it be adopted.</p>	<p>The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.</p>



Comment	ORAL COMMENTS	
	Staff Response	Commission Response
Counsel for competitive providers XO Communications Services, LLC; Talk America, LLC; McLeodUSA Telecommunications Services; Paetec Communications, LLC; and Windstream Services, LLC stated that all of these carriers support the proposed rule change for efficiency and economic reasons and hope that the Commission will adopt it; that the proposed rule change tracks the legislative change to A.R.S. § 40-285 made in 2013; that putting the language of the revision into a separate subsection rather than including it in subsection (A) is a great idea; and that a number of counsel's clients would be filing their Affiliated Interests Rules Annual Reports that week, although those reports would not provide the Commission any useful information because the companies are not rate regulated.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.
Counsel for Cox Arizona Telecom, LLC ("Cox") stated that Cox supports the proposed amendment because the Affiliated Interests Rules were adopted in an era of monopoly utilities due to concerns regarding traditional rate of return regulation, the market has since changed radically to a competitive market that does not need the Affiliated Interests Rules, and the amendment will remove an unnecessary regulatory burden from the competitive telecommunications market.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.
Counsel for AT&T, Incorporated ("AT&T") stated that AT&T supports the rule amendment as stated in its informal comments filed on December 16, 2015.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.
Counsel for Qwest Corporation dba CenturyLink QC, CenturyLink Communications, L.L.C., and CenturyLink Public Communications, Inc. (collectively "CenturyLink") stated that it had filed written comments and that it is in favor of the rule amendment for the reasons stated in those written comments.	Staff acknowledged the supportive comment.	The Commission acknowledges the supportive comment. No change to the proposed rule revision is necessary as a result of this comment.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

No other matters are applicable.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

The rule is no more stringent than Federal Communications Commission rules (47 C.F.R. 63.04).

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable



**15. The full text of the rules follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;  
SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES**

**ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS**

Section

R14-2-802.     Applicability

**ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS**

**R14-2-802.     Applicability**

- A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules.
- B.** Notwithstanding subsection (A), these rules shall not apply to a telecommunications utility whose retail telecommunications services have been classified as competitive pursuant to A.A.C. Title 14, Chapter 2, Article 11, except as may otherwise be determined by a future Commission order.
- ~~B.C.~~ No change

On this 8th day of August, 2016, the foregoing document was filed with Docket Control as a Notice of Final Rulemaking and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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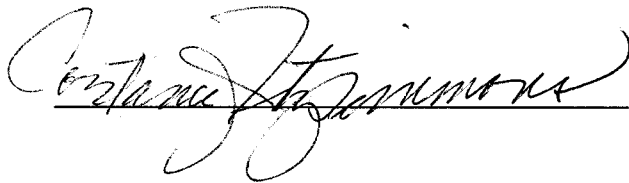
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A handwritten signature in black ink, appearing to read "Constantine Zaimov", written over a horizontal line.